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## Reanimating Brussels, the Beating Heart of the Belgian Federation

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# Chapter 4

## Reanimating Brussels—The Beating Heart of the Belgian Federation



Johan Lievens and Karel Reybrouck

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**Abstract** The constitutional framework of Brussels is characterized by a plethora of different governing bodies and an excessive fragmentation of competences. Leaving the EU aside, the Brussels territory is governed by no less than six governments with formal legislative power. The fragmented division of powers between the federal State, the Brussels-Capital Region and the Communities, and the 19 Brussels municipalities, impedes an efficient and coherent metropolitan governance. This chapter explores the relationship between different echelons of government in Brussels, the type and scope of autonomous powers of the Capital Region and its special position as the capital of Belgium. Section 4.2 elaborates on the main characteristics and some of the fundamental flaws of Brussels’ constitutional framework. Section 4.3 proposes to simplify Brussels’ complicated multilayered institutional framework by reinforcing the Brussels-Capital Region. The proposal consists of a combination of

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the transfer of certain community competences to the regional level and an integration of the municipalities in the Region, allowing the latter to develop a uniform and integrated policy for the entire territory of Brussels.

**Keywords** Belgian federalism · Brussels · Capitals in federal states · City region · Division of competences · Municipal amalgamation · Territorial decentralization

## 4.1 Introduction

The city of Brussels is literally at the heart of the Kingdom of Belgium. Geographically, the capital is located almost in the middle of the country. Constitutionally, it plays an equally central role in the structure of the country, housing institutions of various governments, and bringing together the population of different subentities of the Belgian federation.

The constitutional framework of Brussels is characterized by a plethora of different governing bodies and an incredible fragmentation of competences. Leaving the EU aside, the Brussels territory is governed by no less than six governments with formal legislative power, allowing them to pass legislation within their specific field of competence. This complicated framework is as much the result of Brussels' demographic peculiarity—housing both Dutch- and French-speaking inhabitants—as it is of the capital's position in subsequent reforms of the Belgian federation. The divergent views on the Belgian constitutional framework were hardest to reconcile in Brussels. Consequently, only a complicated and asymmetric overlap of institutions and competences could provide constitutional peace. The resulting framework is not so much based on what is logical or workable for Brussels, as it is the result of a vision on the rest of the country that didn't fully match the reality of the capital. Despite its intricate constitutional structure, Brussels appears at times to be more a (malfunctioning) pacemaker than a healthy beating heart.

This chapter explores the relationship between different echelons of government in Brussels, the type and scope of autonomous powers of the Capital Region and its special position as the capital of Belgium. After elaborating on the main characteristics and some of the fundamental flaws of Brussels' constitutional framework (Sect. 4.2), a twofold reform is proposed. Section 4.3 aims to rethink the institutional framework of the capital by putting Brussels at the centre of its own constitutional design: on the one hand, we propose to reinforce and simplify the competences of Brussels as the primary federated entity governing its territory. On the other hand, we suggest to rethink Brussels as a city by merging the current 19 municipalities of the Capital Region into a single authority, coinciding with the regional authority.

## 4.2 The Institutional Structure of Brussels

In this section the institutional structure of Brussels is clarified. A brief exploration of the historical roots of Belgian federalism (Sect. 4.2.1) is followed by a systematic analysis of the different authorities with formal legislative power governing the Brussels territory. Aside from the federal ‘Belgian’ government, a number of federated entities hold specific devolved competences: the Brussels-Capital Region (discussed in Sect. 4.2.2), the Flemish ‘Community’, the French ‘Community’, the Brussels ‘Joint Community Commission’ and the ‘French Community Commission’ (discussed in Sect. 4.2.3, dealing with the exercise of so called ‘community competences’ within the Brussels territory). Moreover, the Brussels territory is divided into 19 separate municipalities with local autonomy. These are dealt with in Sect. 4.2.4.

### 4.2.1 *Brussels as a Shared Capital*

The primary fault line in Belgian society is centred around the linguistic and cultural fissure which divides the north and the south of the country. In the northern part of Belgium (Flanders) the population speaks Flemish, while the population in the southern part of Belgium (Wallonia) speaks French.<sup>1</sup> Over the past fifty years, tensions between the two main linguistic communities have led the country to transform from a unitary state into a federal state.

Belgium’s complex system of federalism was designed and amended over the course of six consecutive state reforms between 1970 and 2014. Belgian federalism is the product of a compromise between the opposing views from the Dutch-speaking Flemings and the French-speaking inhabitants of the country on how the federal structure should be conceived. The long held Flemish aspiration for cultural autonomy was coupled with the demand of French-speaking politicians for economic self-government for Wallonia. By 1960, both communities pursued a reform of the Belgian state in the direction of a federal structure in order to fulfil their own objectives. The Flemings adhered to the idea of a federal state based on two main communities, the Flemish Community and the French Community, whereby Brussels would (at least partially) be part of the Flemish Community. On the contrary, the French-speaking population envisioned a system of federalism consisting of three economic entities: Flanders, Wallonia and Brussels. Thus, the communities’ different aspirations led to opposing ideas about the conception of a federal system for Belgium. The compromise that emerged from this discussion consisted of the creation of two types of overlapping federated entities: three communities and three regions.<sup>2</sup>

Both the communities and the regions were given full legislative and executive power to exercise specific, formerly centralized, competences. As the communities

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<sup>1</sup>Less than one percent of the population, living in East-Belgium, speaks German.

<sup>2</sup>Alen and Haljan 2013, p. 146; Popelier 2019, pp. 23–24.

and the regions are exclusively competent over their attributed powers, conflicts between federal acts and decrees (or ordinances) of the communities or the regions—at least in principle—do not arise. Consequently, it was not deemed necessary to establish a hierarchy between the different entities under Belgian federalism, in contrast to other federal systems, such as the United States of America or Germany (*‘Bundesrecht bricht Landesrecht’*). In Belgium, the three regions and the three communities are not subordinate to the federal state, and the decrees they issue are equivalent to federal acts.<sup>3</sup>

In negotiations between Flemings and the French-speaking population regarding the design and further development of Belgian federalism, one question has always been on the table: what about Brussels? Belgium’s bilingual capital Brussels is both one of the main factors keeping the country together, as well as a never-ending source of conflict between the Flemings and the French-speaking population of Belgium.<sup>4</sup> Brussels is a fiercely contested city claimed by both the Flemish Community and the French Community as their capital.

Originally, Brussels was a city in which the great majority of the population spoke Dutch, with the exception of a small French-speaking elite.<sup>5</sup> The ‘Frenchification’ process, which started after the independence of Belgium in 1830, gradually changed the linguistic character of the city and the surrounding municipalities.<sup>6</sup> Nowadays, about 90% of the inhabitants of Brussels speak French (either as a native or learned language) while less than a quarter of the population of the city speaks Dutch.<sup>7</sup> The increasing francophone presence in Brussels (and Flanders) is a thorn in the side of Flemish nationalists who insist that Brussels remains a Flemish city. As WITTE described decennia ago: ‘(...) [This] *specific language problem* (...) [grew] *into a conflict that was to dominate Belgian politics for more than 20 years. From 1960 onwards and until [the 1980’s] it was almost permanently fought out in the most hostile of atmospheres, was accompanied by every form of spectacular demonstration, caused great changes in voting patterns and gave rise to momentous crises.*’<sup>8</sup>

Generally speaking, in the Flemish conception of Belgium as a federal state with two main communities, Brussels does not have an autonomous status. Brussels is considered a territory under shared rule (condominium) of both the Flemish community and the French community. On the contrary, French-speaking citizens who adhere to the idea of a Belgium of three regions, view Brussels as a third region, on equal footing with the two other regions. This vision scared the Flemings as they feared permanent minorization in a ‘federalism with three’, with two

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<sup>3</sup>Article 127, §2 Belgian Constitution; Article 128, §2 Belgian Constitution; Article 129, §2 Belgian Constitution; Article 130, §2 Belgian Constitution; Article 134, al. 2 Belgian Constitution.

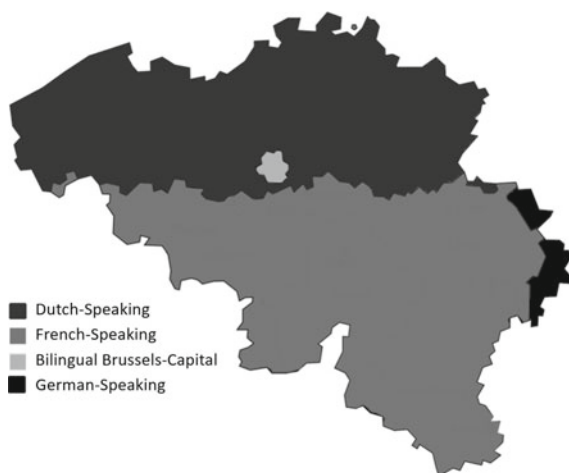
<sup>4</sup>Popelier and Lemmens 2015, p. 93.

<sup>5</sup>Billen 2013, pp. 73–75; Van Velthoven 1989, p. 21.

<sup>6</sup>Van Velthoven 1989, p. 21; Treffers-Daller 2002, p. 50.

<sup>7</sup>Janssens 2018.

<sup>8</sup>Witte 1987, p. 47.



**Fig. 4.1** The division of Belgium into four linguistic areas *Source* The authors

French-speaking entities.<sup>9</sup> They rejected the creation of a Brussels Region on equal footing with the Flemish Region. In the compromise as it stands today, Brussels is an autonomous region, with a particular status, making it slightly inferior to the Flemish Region and the Walloon Region.<sup>10</sup>

### 4.2.2 *Brussels as an Inferior Region*

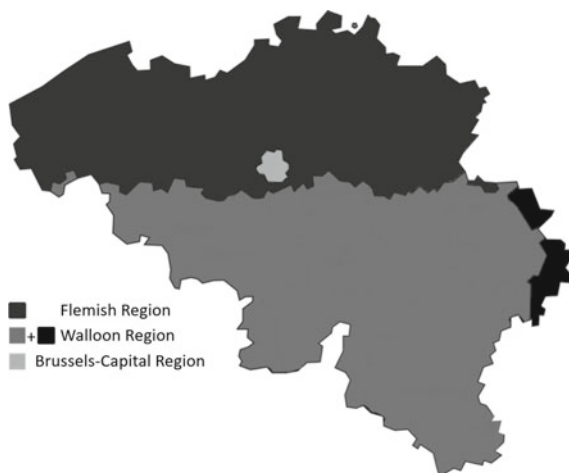
At the heart of Belgian federalism lies the division of the country into *four linguistic areas*: the Dutch-speaking area in the north, the French-speaking area in the south, the German-speaking area in the east (East Belgium) and the French-Dutch bilingual area Brussels-Capital in the centre (see Fig. 4.1). In the Dutch-speaking area, Dutch is the internal working language of public administration and public officials must use Dutch in their communication with the public. Dutch is also the mandatory language operated in public institutions such as courts, schools, etc. The same system is applied in the two other monolingual areas of Belgium. Only in the bilingual area of Brussels-Capital do French and Dutch stand on equal footing.<sup>11</sup>

The Walloon endeavour towards autonomy in economic matters resulted in the creation of three regions: the Flemish Region (coinciding with the Dutch-speaking area), the Walloon Region (comprising the French-speaking and German-speaking

<sup>9</sup>Popelier and Lemmens 2015, p. 88.

<sup>10</sup>Delwit and Deschouwer 2009, pp. 1–2; Demol 1997, pp. 5–6.

<sup>11</sup>See Coordinated Acts 18 July 1966 on the use of languages in administrative matters, *MB* 2 August 1966.



**Fig. 4.2** The division of Belgium into three regions *Source* The authors

areas) and the Brussels-Capital Region (coinciding with the bilingual area Brussels-Capital) (see Fig. 4.2). The Regions have material competences in matters relating to ‘territory’ and ‘economy’, such as labour market, energy policy, agriculture, environment, mobility and transport, spatial planning, urban development, and local government.<sup>12</sup> Each region has a directly elected parliament and a government.<sup>13</sup>

The Brussels-Capital Region exercises the same competences as the other two regions.<sup>14</sup> Brussels is an autonomous region, which nevertheless remains inferior to the Flemish Region and the Walloon Region with regards to certain specific matters. Thus, it is only a ‘Capital Region’ and its legislative acts are called ‘ordinances’, while the other federated entities issue ‘decrees’. Moreover, these ‘ordinances’ can in some cases be subject to a limited administrative review (by the federal government) and judicial review by the ordinary courts, a scrutiny that was not deemed necessary for the ‘decrees’ of the other federated entities.<sup>15</sup> Furthermore, when the Flemish Region and the Walloon Region were awarded certain constitutive powers (as far back as in 1993), the Brussels Capital Region was left with empty hands.

In the Sixth Reform of State (2012–2014), however, the difference between the Brussels Capital Region and the two other regions has shrunk. Brussels recently acquired certain constitutive powers as well (to decide *inter alia* the demarcation of

<sup>12</sup>Article 39 Belgian Constitution and Article 6 Special Act 8 August 1980 on Institutional Reform, *MB* 15 August 1980.

<sup>13</sup>The Flemish Community Parliament in practice exercises both its own competences and those of the Flemish Region (Alen and Haljan 2013, p. 147).

<sup>14</sup>Article 4 Special Act 12 January 1989 on the Brussels Institutions, *MB* 14 January 1989 (hereafter: Special Brussels Institutions Act).

<sup>15</sup>Articles 9 and 45 Special Brussels Institutions Act. A judicial review of regional decrees, comparable to the existing review of ordinances, was introduced in the case law of the Court of Cassation (Belgian Court of Cassation, no. C.08.0452.F, judgment of 21 April 2011).

electoral districts for regional elections, or additional rules for the composition of the Brussels parliament), albeit with certain limitations (excluded are for instance the ratio of MPs in each linguistic group in the Brussels Capital Parliament, the parity composition rule for the Brussels government, and the ‘alarm bell procedure’ protecting the rights of the Flemish minority).<sup>16</sup>

The pacification mechanisms protecting the Dutch-speaking minority in Brussels function both at the legislative and at the executive level. The parliament of the Brussels-Capital Region is split up in two linguistic groups. 72 parliamentarians belong to the French-speaking group and a guaranteed number of 17 MPs make up the Flemish linguistic group.<sup>17</sup> At the legislative level, Flemish inhabitants of Brussels are protected by the existence of pacification mechanisms such as an ‘alarm bell procedure’<sup>18</sup> and qualified majority ordinances.<sup>19</sup> The composition of the government of the Brussels-Capital Region follows the federal example of linguistic parity. It consists of five ministers: the ‘linguistically neutral’ Minister-President, two French-speaking Ministers, and two Dutch-speaking Ministers.<sup>20</sup> It is clear that the small Flemish minority is starkly overrepresented within the parliament, and even more within the executive branch. These mechanisms, aimed at protecting the Flemish minority of the capital make it almost impossible for the Brussels Region to legislate without democratic support in both language groups.<sup>21</sup>

### 4.2.3 *Brussels: Split into Two Communities*

The Flemish pursuit of cultural autonomy led to the creation of *three communities*: the Flemish Community, the French Community and the German-speaking Community (see Fig. 4.3). The concept of ‘community’ refers to a group of people and the bond that unifies them, namely their language and culture. Whilst the competences of the regions are linked to the ‘territory’ and the ‘economy’, the competences of the communities are linked to the ‘person’ and his or her ‘culture’. The communities exercise material competences in person-related matters (e.g. wellbeing policy, health

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<sup>16</sup>The federal government held on to these constitutive competences as it didn’t want to allow Brussels-Capital Region to modify the institutional mechanisms protecting the Dutch-speaking minority in the capital (Peiffer 2015, pp. 88–94).

<sup>17</sup>Articles 14 and 23 Special Brussels Institutions Act.

<sup>18</sup>Three-quarters of MPs in a linguistic group in the Brussels Parliament can table a motion declaring that the provisions of a proposed ordinance are of such a nature as to seriously threaten relations between the communities. This motion suspends the parliamentary procedure, and starts a consultation mechanism at executive level (Article 31 Special Brussels Institutions Act).

<sup>19</sup>Qualified majority ordinances can only be voted or amended when a majority of MPs in each linguistic group vote in favour (Article 28 Special Brussels Institutions Act).

<sup>20</sup>Article 43 Special Brussels Institutions Act.

<sup>21</sup>A mirrored version of these same mechanisms can be found at the federal level where institutional pacification mechanisms protect the French-speaking minority (e.g. parity in the federal government, qualified majority laws, veto powers). See Van Ypersele 1997b, pp. 61–65.





**Fig. 4.3** The division of Belgium into three communities *Source* The authors

system, family policy, youth protection) and in cultural matters and education (e.g. language, sports, media). Each community has its own parliament and government.

The asymmetry in Belgian federalism stems primarily from the imperfect congruence between the borders of the regions and the communities.<sup>22</sup> Brussels is an autonomous region, but it lacks an own community. The contrary is true for the German-speaking area (East Belgium). Whilst the question of the exercise of the regional competences in the latter territory was easily handled by extending the territorial jurisdiction of the Walloon region over East Belgium,<sup>23</sup> the exercise of community competences in Brussels proved a far more intricate conundrum.

In principle, the competences of the federated entities are governed by the idea of territoriality: the regions and the communities only exercise competences within their territorial limits, and do so without competition with another federated entity. Thus, the Flemish Community is prohibited from exercising jurisdiction over Flemings living in the French-speaking area, and vice versa. The underlying idea is to have only one competent authority for each and every competence in each and every part of the country. However, given the lack of a Brussels Community in the Belgian structure, for the exercise of community competences within the bilingual capital the principle of territoriality is abandoned to a certain extent and aspects of personal federalism surface.

<sup>22</sup>Swenden 2002, p. 74.

<sup>23</sup>This 'solution' has not been fully welcomed by local German-speaking politicians, who have been demanding a transfer of all *regional* competences to the authorities of the German-speaking Community. This would make the community responsible for all community and all regional competences (Grundsatzserklärung des Parlaments zur Positionierung der Deutschsprachigen Gemeinschaft im Prozess der Staatsreform, *Parliamentary documents of the Parliament of the German-Speaking Community* 2010–11, no. 83/2, p. 2). This article does not elaborate further on the German-speaking Community as the discussion will be focused on the Brussels Capital Region.

Thus, the jurisdiction of both the Flemish Community and the French Community is stretched out over the bilingual area of Brussels-Capital. This means that both communities do not only exercise territorial jurisdiction over ‘their’ respective monolingual areas (the Flemish Community over the Dutch-speaking part in the north of the country; and the French-speaking Community over the French-speaking south respectively), but also exercise a form of personal jurisdiction over their own community within Brussels. In other words, the French Community—to focus on one of the two—comprises the whole population of the French-speaking area—including Flemings living there—and the inhabitants of the bilingual area Brussels-Capital who adhere to the French Community. However, the Belgian Constitution forbids both communities to directly target *persons* in Brussels, as this would require to identify Brusselsers as belonging to one or the other community. Instead, the two communities must limit the exercise of their competences in Brussels to the *institutions* belonging to their respective communities.<sup>24</sup>

This institution-logic approach ensures that the population of Brussels is not forced to choose a sub-nationality. Comprehensively dividing the population of Brussels into two sub-national groups, a Flemish community and a French community, would be incredibly challenging—if not impossible—for multiple reasons that include mixed-group marriages, as well as the presence of large groups of foreigners and bilinguals who do not fit in this binary community-logic. As a result, in Brussels, two parallel administrations are running their own network of public schools, day care centres, sports clubs, museums, cultural centres and libraries. The prohibition of sub-nationalities in Brussels entails that a person’s attachment to a community through its network of institutions is always voluntary, non-exclusive and not definitive.<sup>25</sup> Residents of Brussels can choose to which community—French or Flemish—to turn for government services, even on a case by case basis. French-speaking parents may choose to send their child to a Dutch-speaking school (organized by the Flemish Community) and to a French-speaking football club (a French Community organization), and alter this choice at any given time.

Two ‘community commissions’ have been created to exercise (part of) the mono-cultural and mono-person-related community competences in Brussels on behalf of their respective communities.<sup>26</sup> The *French Community Commission* (*Commission communautaire française*, hereafter: COCOF) administers the responsibilities of the French Community in the Brussels-Capital Region. The Assembly of the COCOF consists of the 72 members of the French linguistic group in the Parliament of the Brussels-Capital Region. The *Flemish Community Commission* (*Vlaamse Gemeenschapscommissie*, hereafter: VGC) is the extension of the Flemish Community in the Brussels-Capital Region. The Assembly of the VGC consists of the 17 members of the Flemish linguistic group in the Parliament of the Brussels-Capital Region.

<sup>24</sup>The adherence to a community can either be established on the basis of an institutions’ organization (Article 128, §2 Belgian Constitution) or on the basis of an institutions’ activities (Article 127, §2 Belgian Constitution).

<sup>25</sup>Dumont and Van Drooghenbroeck 2011, pp. 201–226; Van Ypersele 1997a, pp. 20–21.

<sup>26</sup>Article 136 Belgian Constitution and Article 60 Special Brussels Institutions Act.

With the risk of overburdening the reader with too much detail: while the VGC *only* acts as a decentralized authority under the mandate of the Flemish Community, the French Community has decided to transfer entire legislative competences to the COCOF.<sup>27</sup> As a result, the COCOF is not only a decentralized institution subordinate to the French Community, but also a legislative authority of its own, able to administer its own community decrees within the Brussels territory.

Additionally, a third community commission has been created: the ‘Joint Community Commission’ (*Gemeenschappelijke Gemeenschapscommissie* or *Commission communautaire commune*, hereafter: COCOM).<sup>28</sup> The COCOM is the competent authority for person-related community matters not exclusively relating to one of the two communities. Although the COCOM is a separate legal entity, its competences are exercised by the MPs and ministers of the Brussels-Capital Region. The composition of the legislative and executive organ of the COCOM is the same as the composition of the parliament and the government of the Brussels-Capital Region, including the division in two language groups.<sup>29</sup>

The COCOM fills the void left by the Flemish Community and the French Community, which can neither directly target persons, nor target institutions not exclusively adhering to one of the two communities. The COCOM is responsible for providing direct assistance to citizens in Brussels, without the intervention of intermediary institutions. The COCOM is competent for the so-called ‘bi-person-related community matters’, i.e. the ‘person-related’ community competences that cannot be traced back to one of the two communities. These institutions include, among others, hospitals, sanatoriums, public centres for social welfare, centres of preventive medicine, other health care institutions and centres of assistance for people with disabilities.

For the community competences in cultural matters and education a same problem arises as for person-related matters: following the system laid out above the Flemish and French Community have only a limited competence for monolingual institutions. Contrary to the choice for a Brussels institution—the COCOM—for bi-person-related matters, the federal government withholds the competence over the so-called ‘bicultural community matters’ in Brussels, i.e. activities and institutions in the field of culture and education that do not adhere to either one of the two communities. Existing examples include the National Orchestra of Belgium, the Centre for Fine Arts Brussels and the Federal Opera House. Other examples could be bilingual schools, multilingual sports centres etc.

For the sake of completeness, we shouldn’t forget that the federal government exercises its own competences within the Brussels territory. In Belgium, federal

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<sup>27</sup>Article 138 of the Belgian Constitution allows the French Community to transfer the community competences exercised in the French-speaking area to the Walloon Region, and transfer the community competences exercised in the bilingual region of Brussels-Capital to the COCOF.

<sup>28</sup>Article 135 Belgian Constitution and Article 60 Special Brussels Institutions Act.

<sup>29</sup>The president of the Government of the Brussels Capital Region however only has an advisory voice (“*voix consultative*”, “*raadgevende stem*”) when presiding the executive organ (“*collège réuni*”, “*verenigd college*”) of the COCOM (Article 77 Special Act 12 January 1989 on the Brussels Institutions).

competences include *inter alia* national security, social security, justice, police, civil and criminal law, rail transport and public health.<sup>30</sup>

#### 4.2.4 *Brussels: A City Divided into 19 Municipalities*

The previous sections elaborated on the complex division of competences between the Brussels-Capital Region, the communities and the federal government in Brussels. To add to the complexity of Brussels' stratified institutional structure, competences are not only scattered between these authorities at a state level, but also at the lower level. At the local level, the territory of the Brussels-Capital Region is divided into nineteen decentralized municipalities. The distribution of powers between these municipalities and the authorities with legislative power brings about an inefficient fragmentation of competences.<sup>31</sup>

In order to understand the nature and powers of the municipalities in Brussels, we must first explain the overarching model of territorial decentralization in Belgium.

In 1830, Belgium was founded as a territorially decentralized unitary state, divided in 9 provinces and approximately 2500 municipalities.<sup>32</sup> The provinces and municipalities or communes are subordinate governments. The central government (and later also the Regions and the Communities) exercise an administrative supervision over all acts of these decentralized institutions. The Belgian Constitution endows the municipalities with the power over all matters of municipal interest and the provinces with the power over all matters of provincial interest.<sup>33</sup> This principle of local autonomy, which plays an essential role to determine the competences of these local authorities, has both a so-called positive and a negative dimension.

With regards to the municipalities, the positive dimension of the principle of local autonomy implies that the municipal council is competent for all matters of municipal interest. According to the Constitutional Court the principle of local self-government presupposes that local authorities are able to seize any object which they consider to be in their interest, and to regulate as they feel appropriate.<sup>34</sup> In general, municipalities exercise competences with regards to e.g. maintenance of municipal roads and squares, municipal taxation, and maintenance of law and order. Other examples of municipal competences are communal regulations regarding public parks, clean streets, planning permission and cemeteries, or building communal schools, crèches, sports centres and cultural centres.

The negative dimension of the local autonomy principle protects the local authorities against any intrusive action by the higher authorities (the Federal Government, the Regions and the Communities) aiming to limit the municipal sphere of competence.

<sup>30</sup>Vande Lanotte et al. 2006, p. 90.

<sup>31</sup>See Sect. 4.2.5.

<sup>32</sup>Alen and Haljan 2013, pp. 36–40.

<sup>33</sup>Articles 41 and 162 Belgian Constitution.

<sup>34</sup>Belgian Constitutional Court, no. 89/2010, judgement of 29 July 2010, B.18.2.

The Constitution prohibits any disproportionate violation of municipal autonomy by the higher authorities.<sup>35</sup>

Between 1960 and 1977 a large-scale process of municipal amalgamations decreased the total number of municipalities with more than 75% to a little under 560.<sup>36</sup> This major redesign of the landscape of territorial decentralized authorities left the nineteen Brussels municipalities untouched. The decentralized structure of Brussels today is a nineteenth-century relic with a far from logical demarcation of municipal borders.

Even though the Brussels municipalities were never merged and persisted in their nineteenth-century constellation, the municipal level has undergone some profound changes in the past fifty years.

In an attempt to create a coordinating body for the nineteen municipalities, the Brussels Agglomeration was created in 1971.<sup>37</sup> The Agglomeration is a territorially decentralized authority created to exercise some former municipal competences such as taxi-policy, trash collection, waste management, the fire department and urgent medical aid.<sup>38</sup> The Brussels Agglomeration can be seen as the institutional predecessor of the Region of Brussels-Capital, which was created in 1989 and took over all the Agglomeration's competences.

After the federalization process carved up Belgium along linguistic lines, the former bilingual province Brabant became an anachronistic memory of the defunct unitary Belgian State. In 1995, this province was split in two new provinces: the province of Flemish Brabant (comprising the Brabant communes belonging to the Flemish linguistic area) and the province of Walloon Brabant (comprising the Brabant communes belonging to the French linguistic area). Since Brussels was deemed to count more than enough governing bodies already, the idea of creating a specific Brussels Province was rejected.<sup>39</sup> As a consequence, the nineteen Brabant municipalities which make up the bilingual area Brussels-Capital were excluded from division into provinces.<sup>40</sup>

#### 4.2.5 *Brussels: A Heart with Many Chambers*

The present statute of Brussels is not the result of a conscious, deliberate choice. Both Dutch-speaking and French-speaking politicians and academics agree that no one

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<sup>35</sup>Belgian Constitutional Court, no. 89/2010, judgement of 29 July 2010, B.18.4.

<sup>36</sup>De Ceuninck et al. 2010, pp. 810–811.

<sup>37</sup>Article 165 Belgian Constitution; Article 1 Act 26 July 1971 regarding the Organisation of Agglomerations and Federations of Municipalities, *MB* 24 August 1971.

<sup>38</sup>Article 4 Act 26 July 1971 regarding the Organisation of Agglomerations and Federations of Municipalities, *MB* 24 August 1971.

<sup>39</sup>Van Orshoven 1993, p. 249; Clement et al. 1993, p. 133.

<sup>40</sup>Article 5, 2 Belgian Constitution.

considers the current institutional architecture a desirable solution for Brussels.<sup>41</sup> As the political agreement which preceded the last Reform of State (2012–2014) stated: ‘*In a lot of cases, this fragmentation of competences between the different authorities in Brussels impedes an efficient and coherent metropolitan governance*’.<sup>42</sup>

In Brussels day-to-day politics it is not unusual for a policy matter to be left untouched or only dealt with after intense negotiations between different governments, often trying to pass on responsibility to one another. Environment, mobility, and housing, for example, are regional matters, but the federal government and the municipalities are also involved in these matters.<sup>43</sup> One recent concrete example might clarify this: in 2018–2019 the Brussels North station served as a clandestine, temporary refuge for a number of immigrants, most of whom were most likely planning to travel on (without authorization) to the UK. This created a clear need for government initiative, to answer both the needs of the immigrants (who were sleeping in detrimental conditions on the floor of the station, with only limited sanitary equipment), and to respond to reported instances of nuisance experienced by everyday commuters. However, the national railway company and immigration are *federal* matters, the station services buses from both the Brussels and the Flemish *regional* bus companies (the drivers of the latter being the most vocal in complaining about nuisance in this example), personal assistance should be provided by the *COCOM*, and the station happens to be located right on the border between the *municipalities* of Saint-Josse-ten-Noode and Schaerbeek, who are in charge of policing the neighbourhood.

*No* government taking responsibility is not the only problem. The opposite has happened as well: the Brussels Region trying to launch new policies, and bumping into institutional limits. For instance, when the Brussels Region started to finance day care centres and schools, the Constitutional Court annulled these government programs on the ground that education and child care are community competences.<sup>44</sup>

Figure 4.4 gives an overview of the different legislators (at the non-local level) active in Brussels and their respective competences as discussed above. This schedule corresponds to the situation pre-2012. The most recent changes—from the 2012 state reform—will be discussed later on, as a stepping stone for our first proposal for improvement.

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<sup>41</sup>Delwit and Deschouwer 2009, p. 1; Maskens and Vandenberghe 2019, p. 19; Van Wynsberghe 2013, p. 100.

<sup>42</sup>Government Agreement Di Rupo I, 1 December 2011, p. 27, [https://www.lachambre.be/kvvcr/pdf\\_sections/searchlist/Accord\\_de\\_Gouvernement\\_1er\\_decembre\\_2011.pdf](https://www.lachambre.be/kvvcr/pdf_sections/searchlist/Accord_de_Gouvernement_1er_decembre_2011.pdf) Accessed 1 November 2019.

<sup>43</sup>Van Wynsberghe 2013, pp. 100–101.

<sup>44</sup>Belgian Constitutional Court, no. 184/2011, judgement of 8 December 2011; Belgian Constitutional Court, no. 67/2012, judgement of 24 May 2012.

Category	Regional	Community Culture, education, person-related			Federal
Authority	Brussels Capital Region	COCOM	Flemish Community → VGC	French Community → COCOF	Federal government
Competence	Territory & economy	Biperson- related	Monocultural (incl. monolingual schools) Monoperson-related		Bicultural Federal competences
Basis	39 & 134 Const.	135 Const.	127, §2 and 128, §2 Const.		35 Const. 35 & other Const.

**Fig. 4.4** The authorities with legislative powers in Brussels, pre-2012 *Source* The authors

### 4.3 Rethinking the Institutional Structure of Brussels

For readers without prior knowledge about Belgian constitutional law, the institutional structure outlined above might appear extremely complicated. This is not less the case for the population of Brussels (or of Belgium as a whole), and even for politicians, policy makers, activists, journalists, and others who work with and within this structure on an everyday basis. This section aims to rethink Brussels’ constitutional framework, putting the Capital Region at the centre of its own constitutional design. The aim is to strengthen efficiency and transparency, assuming it is a precondition of true citizenship that people should be able to understand governmental structures. In what follows, we therefore develop two intertwined propositions.

First, Sect. 4.3.1 discusses the optimization of Brussels as a federated entity. Building on recent evolutions from the ‘Sixth State Reform’ (2012) and on proposals from legal and political doctrine, we develop a scheme of Brussels as a fully-fledged federal entity, holding not only regional competences, but also community competences. This would not only eliminate a whole layer of complexity in the institutional scheme, it would also facilitate new policies, such as the creation of true Brussels bilingual educational or cultural initiatives.

Secondly, in Sect. 4.3.2 the possibility is explored of merging the 19 municipalities of the Brussels region into one single local authority, coinciding with the regional authority. In order to maintain a level of political participation closer to the citizens, a number of districts whose borders may or may not coincide with those of today’s communes could be created simultaneously.

#### 4.3.1 *Brussels as a Region Community?*

Over the last fifty years, consecutive amendments of the Belgian state structure have time after time added to the complexity of Belgian federalism as a whole, and—particularly—of Brussels as its capital region. The 2012–2014 ‘Sixth State Reform’ was no exception to this dynamic. One of the many changes it introduced concerned the competence for ‘bicultural’ matters in Brussels. As outlined above, bicultural



Category	Regional	Community Culture, education, person-related			Federal
Authority	Brussels Capital Region	COCOM	Flemish Community → VGC	French Community → COCOF	Federal government
Competence	Territory & economy	Bicultural: 3 categories	Biperson- related	Monocultural (incl. monolingual schools) Monoperson-related	Bicultural
Basis	39 & 134 Constitution	135bis Const.	135 Const.	127, §2 and 128, §2 Const.	35 Const.
					35 & other Const.

**Fig. 4.5** The authorities with legislative powers in Brussels, since 2012 *Source* The authors

matters in Brussels remained a competence of the federal government. This specific competence seems to have slipped the attention of the federal government as the amount of government initiatives taken within this field in the last decades are few.<sup>45</sup> This comes as no surprise. As the competences for culture, media and communication have been transferred to the Communities in the first stage of the process of federalization in 1970, the federal administration nowadays lacks the relevant structure, expertise and incentives to take bicultural initiatives in Brussels. To remedy the inaction of the federal government, the competence for *certain* bicultural matters was transferred to the Brussels region in 2012–2014, thus adding an extra layer of complexity to the Belgian system. This transfer concerned three specific bicultural matters: the financing of municipal sport infrastructure; vocational training; and bicultural matters of regional concern related to the fine arts, the cultural patrimony, museums and other scientific-cultural institutions.<sup>46</sup>

Thus, a limited number of community competences was assigned to a *regional* authority. The result is shown in Fig. 4.5.

We propose to deepen this recent complication in order to—paradoxically—arrive at a simplification of Brussels’ institutional structure. Continuing on the path of the last reform our proposal is to make the Brussels Region competent for *all* community competences, at least as far as they are not monocultural or mono-person-related. In other words, the remaining federal ‘bicultural’ competences for culture and education should be transferred to the Brussels Region. The regional institutions should also take over the bi-person-related competences currently assigned to the COCOM.

By transferring the bicultural and bi-person-related community competences to the Brussels Region the number of competent authorities can be reduced, simplifying the overall structure and thus its transparency. First, the COCOM would cease to exist. Thereby, the artificial distinction whereby the same politicians are considered to represent the Region or the COCOM depending on the matter at stake would be abandoned.<sup>47</sup> However, abolishing the COCOM raises another question. Should the

<sup>45</sup>Dumont and Vancraeyebeck 2008, p. 252; Lievens 2014, p. 287.

<sup>46</sup>Article 135bis Belgian Constitution and Article 4bis Special Brussels Institutions Act; see Lievens 2014, pp. 282–286.

<sup>47</sup>The main feature of COCOM decision making—a requirement of a special majority for *all* its competences, requiring half or a third of votes from both language groups—could be maintained for ‘bi-person-related’ matters within the regional system. Another option—that does not need to be linked to our proposal—is to evaluate and potentially adapt the special majority system.



COCOM decision making requirements—a special majority for all its competences, requiring half or a third of votes from both language groups—be maintained in the regional system? Maintaining the *status quo* for ‘bi-person-related’ matters in Brussels (and even in specified regional matters, such as the organization of local institutions) might decrease the benefit of “simplification” and “transparency”. Conversely, altering the *status quo* might be considered non-negotiable for Flemings who consider the special majority requirement to be a crucial aspect of the protection of their minority position. Another option is to evaluate and potentially adapt the special majority system in community affairs in Brussels. A broader evaluation could entail a redefinition of the numerical thresholds, a change in the competences for which a special majority is required, or even an adaptation of the number of representatives in each of both language groups or a reconfiguration of the language group system as a whole. Given the sensitivity of these matters, we believe it is primarily a political task to find a balance in this within the larger institutional compromise.

Secondly, the federal government would no longer be one of the legislators for community matters, a role it was in practice not (fully) fulfilling anyway. Control on compulsory education would thus become a competence of the Brussels Region, besides bi- or multilingual radio stations, television, day care, schools etc.

Thirdly, in order to better match the multilingual reality of Brussels daily life we suggest to no longer speak of ‘bicultural’ and ‘bi-person-related’ competences. Instead we propose a new terminology, speaking of multicultural and multi-person-related competences when referring to non-monocultural and non-mono-person-related competences.

Although the Brussels Region gains competences for *all* community matters, the distinction between mono- and multi-cultural (or mono- and multi-person-related) matters remains relevant. The Flemish and French Community will remain competent for monocultural and mono-person-related initiatives. As much as there seems to be a political desire by Brussels’ politicians to take these community competences into their own ‘regional’ hands, an equally legitimate interest can be identified from the side of the two communities to continue their support of cultural, educational and ‘mono-person-related’ institutions within the Brussels territory.

The purpose is not to give Brussels a competing parallel competence for those monocultural or mono-person-related matters. Neither do we intend to allow the French and Flemish Community to actively support multi-cultural or multi-person-related initiatives. Nevertheless, a certain ‘competition’ cannot be excluded. Imagine the situation where both the Brussels Region and the Flemish Community intend to open a museum with the same theme (e.g. Tintin—or in Dutch: *Kuifje*); or where both the Communities and the Region were to open schools or day care centres. If we want to honor the legitimate claims of both the multilingual Brussels authorities and the monolingual communities, such parallel ‘competing’ initiatives seem unavoidable.

Even today, some competences are already being taken care of by both the Brussels Region and the Communities.<sup>48</sup>

In our proposal the Brussels Region will become competent for *all* multicultural and multi-person-related matters. *Legally* speaking, the distinction between multicultural competences (as rooted in Article 127 of the Constitution, currently a competence of the federal government and—partly—of the Brussels Region) and multi-person-related competences (as rooted in Article 128 of the Constitution, currently a COCOM competence) would cease to exist. *Politically* however the distinction might remain relevant.<sup>49</sup>

In cultural matters, including in education, the Flemish and French Community can continue to play a major role. The existing network of schools and the, mostly Flemish, desire to maintain ‘proper’ cultural institutions within the shared bilingual capital are important elements here. Meanwhile we propose allowing the Brussels Region to develop a complementary multilingual education policy, surpassing the rift between both communities, fully addressing the population of Brussels as a whole.<sup>50</sup> Thus, local and international cultural institutions or events could be organized under regional policy—in addition to the existing community initiatives. Even a candidacy by the regional government for the Olympics (which is nowadays not possible as the competence for sport is a community one) should be feasible.<sup>51</sup>

For person-related matters we envision a future in which the primary responsibility befalls the Brussels Region. The Region would thereby aim to provide the entire population of the capital with all services relating to ‘person-related’ matters. Additionally—building on an in itself sufficient ground level of services provided by the Region—the communities can operate in this same field, although only through monolingual institutions (mono-person-related matters). An important condition for this scenario to attract political support from both communities is that sufficient guarantees should be given to the Flemish (Dutch-speaking) minority of the Brussels Region to retain access to quality services in their own language.

Although the institutional framework of the shared capital will inevitably retain a certain level of complexity, our proposal allows for a clear simplification. This is made visible in Fig. 4.6: one authority is abolished (the COCOM) and three columns of competences are merged into one. The different multicultural and multi-person-related competences—which we have labelled ‘multi-community competences’—are now brought together under the authority of the Brussels-Capital Region.

By increasing the role of the Brussels Region for community competences, the Region can develop a common policy for its entire territory, looking beyond the distinction between community and regional competences and fully addressing

<sup>48</sup>Thus both the Region and the Communities are providing rental wheelchairs to people with disabilities (see Loosveldt 2017, p. 406).

<sup>49</sup>Dumont and El Berhoumi 2018.

<sup>50</sup>El Berhoumi et al. 2019.

<sup>51</sup>See on sports: Parliamentary Proceedings of the Parliament of Brussels Capital Region 2002–03, nr. 55, p. 10.

Category	Regional	Community Culture, education, person-related		Federal
Authority	Brussels Capital Region	Flemish Community → VGC	French Community → COCOF	Federal government
Competence	Territory & economy	Multicommunity competences (multicultural + multiperson-related)	Monocultural (incl. monolingual schools) Monoperson-related	Federal competences
Basis	39 & 134 Const.	New article	127, §2 and 128, §2 Const.	35 & other Const.

**Fig. 4.6** The authorities with legislative powers in Brussels, proposal *Source* The authors

the entire population, whether their mother tongue is Dutch, French or any other language.

This proposal is more than an academic exercise. It answers a returning demand of Brussels' authorities to be awarded 'fuller' competences, and contributes to making the institutional framework less complex, and thus more accessible for the citizens. Proponents of this proposal will welcome this simplification of an overly complex constitutional framework, as well as the potential efficiency that can be gained with it. Opponents might fear a weakening of the position of the Flemish minority in Brussels. The Brussels Fleming is said to be strongly attached to the strong network of Flemish Community institutions in Brussels. It is important to note that the proposal here discussed does not aim to annul Flemish initiatives in the capital. The position of Flemish schools and cultural institutions in Brussels will remain the same (the only thing changing being the creation of a competence for the Brussels Region to take the initiative for a parallel multilingual policy, e.g. by providing subsidies to bilingual educational initiatives).

Our proposal allows the Region to develop a common and fully fledged policy for the entire territory of Brussels. As it aims to strengthen efficiency, simplification and transparency, we deem it perfectly combinable with another evolution: a fusion of the 19 existing communes making up the Brussels Region, with a centralization of communal power at the regional level.

### 4.3.2 *Brussels as a City Region?*

With regard to the institutional reform at the local level in Brussels, a heated debate exists between so-called 'regionalists' and 'municipalists'. Regionalists wish to reinforce the Brussels-Capital Region by either endowing the Region with competences which are traditionally exercised by the municipalities, or by merging the communes, or even by suppressing the municipal level as a whole.<sup>52</sup> Municipalists, on the other

<sup>52</sup>See Sottiaux 2013, pp. 29–30.

hand, are in favour of conserving strong municipalities in the Brussels institutional structure.<sup>53</sup>

Let us have a closer look at the arguments of both sides in this debate. Proponents of a strong local level often invoke the proximity and democratic representativeness of municipalities. These local authorities are the lowest representative political body, which offers the citizen the opportunity of participating effectively in the making of decisions affecting their everyday environment.<sup>54</sup> Political representatives at the municipal level are in close contact with citizens and have more concrete field knowledge. Furthermore, the principle of local autonomy means that the municipalities are not confined to the area of regional powers. The municipalities can take action in all matters of municipal interest, enabling them to manage cross-cutting policies irrespective of the exclusive division of powers between the Brussels-Capital Region, the Communities and the federal government. The municipal level is therefore the only place where powers which are scattered between the higher authorities in Brussels, are consolidated.<sup>55</sup>

Regionalists stress that nineteen municipalities, with different local interests and political coalitions, are incapable of bringing an integrated and efficient governance for the whole city. Only the Region is able to bring coherence to largescale policies and promote the regional interest as a whole, in contrast with the 19 municipalities that rarely transcend their own local interest.<sup>56</sup> Secondly, developing a policy at the level of the Region allows more economy of scale and entails a solidarity mechanism between inhabitants of richer and poorer municipalities. Operating at the regional level allows for inequalities to be made up for on a larger scale through the redistribution of means or through social adjustment mechanisms.<sup>57</sup>

Over the past years, regionalists have tabled a number of proposals rethinking the place of the municipalities in the institutional system. The status, competences and even the continued existence of Brussels' 19 municipalities are increasingly questioned.<sup>58</sup> These proposals are generally centred around one of two main axes. The first category of proposals focuses on reorganizing the competences between the local level and the Brussels-Capital Region. The second, more drastic, set of proposals envisions some municipal amalgamations, a complete fusion of the nineteen municipalities or even a total abolition of the municipal level in Brussels. In the last scenario, the Brussels-Capital Region would absorb the municipal competences and become a city region, acting both as a subordinate, territorially decentralized authority and as a federated entity.<sup>59</sup> It is important to take both the municipalist arguments and the arguments pro-regionalization into account when contemplating

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<sup>53</sup>See Cadranel and Mossoux 2014, pp. 449–457.

<sup>54</sup>Lagasse 2012, pp. 6–7; Sottiaux 2013, p. 28.

<sup>55</sup>See Cadranel and Mossoux 2014, pp. 455–456; Lagasse 2012, pp. 6–7.

<sup>56</sup>Lagasse 2012, p. 8.

<sup>57</sup>*Ibid.*

<sup>58</sup>For some examples, see Maskens and Vandenberg 2019, pp. 25–29; Nassaux 2018, pp. 18–19; Van Haute et al. 2018, pp. 33–104.

<sup>59</sup>Nassaux 2018, pp. 31–32.

a reform of the local level in Brussels. We propose to merge the 19 municipalities of the Brussels Region into one single local authority. That authority is to coincide with the regional authority, thus avoiding a conflict of two territorially overlapping entities: a Brussels-Capital City and a Brussels-Capital Region. This should allow more economy of scale and enable Brussels-Capital Region to govern the whole territory in an integrated and efficient way. In order to maintain a level of political participation closer to the citizens, a number of districts whose borders may or may not coincide with those of today's communes could be created simultaneously. The most important difference between the present-day municipalities and the newly created districts is the absence of the constitutional protection of local autonomy. As was mentioned above, the local autonomy principle forbids the Region to intrude in the municipal sphere of competence by harmonizing, coordinating or even taking over municipal competences in a disproportionate way. Districts do not fall under the protection of local autonomy. An ordinance of the Brussels-Capital Parliament can define the competences, working rules and mode of election of these intra-municipal territorial bodies.<sup>60</sup> This allows the Brussels-Capital Region to decide autonomously on the division of competences between the higher authorities and the districts without any constitutional constraints, placing Brussels again at the centre of its own institutional design.

## 4.4 Conclusion

Leaving the EU aside, the Brussels territory is governed by no less than six governments with formal legislative power. Federal, regional, community and local competences have been awarded to a multilayered institutional framework lacking efficiency and transparency. Section 4.2 explored the many institutions that govern the Brussels territory, and their respective competences. Although Brussels is physically at the heart of the Belgian federation, institutionally it has been treated as an afterthought of opposing Flemish and Walloon constitutional desires.

Building on this framework, Sect. 4.3 described how constitutional change can improve Brussels' institutional design. The developed proposal is twofold. A first improvement consists of a transfer of formal legislative powers to the Brussels-Capital Region. The Capital Region should acquire full competences for bicultural and bi-person-related—to be called multicultural and multi-person-related—matters. On the one hand, this would deprive the COCOM of all its competences, thus reducing the number of federated entities within the Belgian framework. On the other hand, it would end the competence of the federal government for bicultural matters, thus providing a solution for the frustration of Brussels' politicians with the inaction at the federal level.

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<sup>60</sup> Article 41 Belgian Constitution.

A second improvement is to be made at the local level. Our proposal is to merge the 19 municipalities of the Brussels Region into one single local authority, coinciding with the regional authority. Under the authority of the Brussels-Capital Parliament a number of districts could be created to maintain a level of political participation closer to the citizens.

Our proposal enables the Brussels-Capital Region to develop more coherent policy initiatives, crossing the artificial boundaries between community, regional and local matters, and addressing the multilingual population of Brussels as a whole. By doing so, it answers some of the fundamental flaws of the constitutional design of Brussels—today a malfunctioning pacemaker—and allows the capital to evolve into the true heart of the Belgian federation.

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